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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

JESSE ABBOTT DURAN,

Defendant and Appellant.

B293833

(Los Angeles County
Super. Ct. No. VA134599)

APPEAL from an order of the Superior Court of Los Angeles County, Robert J. Higa, Judge. Affirmed.

Loretta Quick, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Appellant Jesse Abbott Duran appeals from the court’s declining to reduce his initial sentence after we remanded for the trial court to consider whether to exercise its discretion to strike firearm enhancements reflected in that sentence. On January 30, 2018, his appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). We have reviewed the matter pursuant to *Wende*, and *People v. Kelly* (2006) 40 Cal.4th 106 (*Kelly*), and have found no arguable appellate issues.

FACTUAL AND PROCEDURAL BACKGROUND

In a June 22, 2018 unpublished opinion, we reviewed a judgment convicting and sentencing Duran for attempted carjacking (Pen. Code, §§ 664, 215, subd. (a));¹ attempted willful, deliberate, and premeditated murder (§§ 664, 187, subd. (a)); shooting at an occupied motor vehicle (§ 246); possession of a firearm by a felon (§ 29800, subd. (a)(1)); and assault with a firearm (§ 245, subd. (a)(2)). (See *People v. Duran* (June 22, 2018, B281893) [nonpub. opn.].) We remanded to the trial court “in order to permit it to consider whether to exercise its discretion with respect to striking the firearm enhancements, in light of [Senate Bill No. 620].” (*Ibid.*) Senate Bill No. 620 amended sections 12022.5 and 12022.53, such that a “court may, in the interest of justice pursuant to Section 1385 and at the time of sentencing, strike or dismiss an enhancement otherwise required to be imposed by [sections 12022.5 or 12023.5].” (Sen. Bill No. 620, §§ 1 & 2, amending §§ 12022.5, subd. (c), 12022.53, subd. (h).) Prior to the enactment of Senate Bill No. 620 in October 2017—and thus at the time the court imposed Duran’s sentence—these

¹ All subsequent statutory references are to the Penal Code unless otherwise indicated.

enhancements were mandatory, and the trial court lacked the authority to strike or dismiss them. (See, e.g., *People v. Kim* (2011) 193 Cal.App.4th 1355, 1362–1363, citing former § 12022.53, subd. (h).)

This court issued its remittitur on September 14, 2018. At an October 31, 2018 hearing that Duran attended, the trial court declined to strike the firearm enhancements. The court explained that striking the enhancements would not be in the interests of justice, because “this was a case that you shot at people and also hit a car driving down the street [¶] . . . [¶] . . . So this is a very serious case. And, based on the facts, I would exercise my discretion by not striking the firearm allegations.”

Duran filed a timely notice of appeal from that decision on November 6, 2018. On January 30, 2018, his appointed counsel filed a *Wende* brief, raising no issues on appeal from the sentencing decision, and requesting that we independently review the record to determine if the lower court committed any error. On the same day, Duran’s counsel sent to Duran a letter explaining her evaluation of the record on appeal and her intention to file a *Wende* brief. This letter enclosed a copy of the record on appeal and informed Duran of his right to file a supplemental brief. This court also sent notice to Duran of his right to file a supplemental brief within 30 days from the date of the notice; Duran did not file a brief within that time frame, or at any point thereafter.

DISCUSSION

“ ‘ “The discretion of a trial judge . . . is subject to the limitations of legal principles governing the subject of its action. . . .” ’ Action that transgresses the confines of the applicable principles of law is outside the scope of discretion and we call such action an ‘abuse’ of discretion.” (*City of Sacramento v. Drew* (1989) 207 Cal.App.3d 1287, 1297–1298.) “The obvious legislative intent” of the firearm enhancements under sections 12033.5 and 12202.53 is “to deter the use of firearms.” (*People v. Chambers* (1972) 7 Cal.3d 666, 672.) Section 1385 affords a judge discretion to strike sentencing enhancements “in furtherance of justice.” (§ 1385, subd. (a); *id.*, subd. (b)(1).)

We have reviewed the record on appeal and are satisfied that no arguable appellate issue exists, as the court acted within the scope of its discretion. We are further satisfied that Duran’s counsel has fully complied with her responsibilities. (See *Wende, supra*, 25 Cal.3d at pp. 439–442; *Kelly, supra*, 40 Cal.4th at pp. 123–124.)

DISPOSITION

The judgment is affirmed.

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ROTHSCHILD, P. J.

We concur:

CHANEY, J.

BENDIX, J.